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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/677,353

10/03/2003

Akio Nakamura

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EXAMINER

MARTIN, ANGELA J

ART UNIT

PAPER NUMBER

1745

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/677,353

Applicant(s)

NAKAMURA ET AL.

Examiner

Angela J. Martin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 2-4, 10, 11 in the reply filed on 10/11/2006 is acknowledged. Applicant has canceled claims 1, 3, 6, 7, 8, and 9 without prejudice.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2-4, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bossel, DE 4033708 A1.

Bossel teaches a fuel cell device, comprising: a case including: a holder frame; a first hemi-case movably attached to a first side of the holder frame; and a second hemi-case movably attached to a second side of the holder frame opposite to the first side, the first hemi-case and the second hemi-case being movable in an approaching direction in which the first hemi-case and the second hemi-case approach and a separating direction in which the first hemi-case and the second hemi-case separate; a fuel cell unit in the case, including a plurality of fuel cells movably arranged inside the holder frame; and a springy member that urges adjacent two of the fuel cells to enlarge an interval therebetween; wherein when the first hemi-case and the second hemi-case are moved in the separating direction, adjacent two of the fuel cells are moved by the

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springy member, thereby enlarging an interval between adjacent two of the fuel cells (abstract). The fuel cell device as claimed in claim 2, wherein the holder frame has a first opening that makes space between adjacent two of the fuel cells communicate with space outside the case; each of the first hemi-case and the second hemi-case has a second opening that makes space between the case and the fuel cell adjacent to the case communicate with space outside the case; and the first opening and the second opening are sealed by the first hemi-case and the second hemi-case when the first hemi-case and the second hemi-case are moved to confront with each other, and are exposed when the first hemi-case and the second hemi-case are moved to separate from each other (Fig. 1). The fuel cell device as claimed in claim 2, wherein the holder frame includes a fuel feeding port; and the fuel cell unit includes a flexible tube for connecting the fuel cells and the fuel feeding port (Fig. 1). A fuel cell case for accommodating a plurality of fuel cells, comprising: a holder frame; a first hemi-case movably attached to a first side of the holder frame; and a second hemi-case movably attached to a second side of the holder frame opposite to the first side, the first hemi-case and the second hemi-case being movable in an approaching direction in which the first hemi-case and the second hemi-case approach and a separating direction in which the first hemi-case and the second hemi-case separate; wherein when the first hemi-case and the second hemi-case are moved in the separating direction, an interval between adjacent two of the fuel cells is enlarged. The fuel cell device as claimed in claim 10, wherein the holder frame has a first opening that makes space between adjacent two of the fuel cells communicate with space outside the case; each of the first

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hemi-case and the second hemi-case has a second opening that makes space between the case and the fuel cell adjacent to the case communicate with space outside the case; and the first opening and the second opening are sealed by the first hemi-case and the second hemi-case when the first hemi-case and the second hemi-case are moved to confront with each other, and are exposed when the first hemi-case and the second hemi-case are moved to separate from each other (Fig. 1). Claims 10 and 11 have product-by-process sections. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, the claims are anticipated.

4. Claims 2-4, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al., JP 07-035883.

Bossel teaches a fuel cell device, comprising: a case including: a holder frame; a first hemi-case movably attached to a first side of the holder frame; and a second hemi-case movably attached to a second side of the holder frame opposite to the first side, the first hemi-case and the second hemi-case being movable in an approaching direction in which the first hemi-case and the second hemi-case approach and a separating direction in which the first hemi-case and the second hemi-case separate;

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a fuel cell unit in the case, including a plurality of fuel cells movably arranged inside the holder frame; and a springy member that urges adjacent two of the fuel cells to enlarge an interval therebetween; wherein when the first hemi-case and the second hemi-case are moved in the separating direction, adjacent two of the fuel cells are moved by the springy member, thereby enlarging an interval between adjacent two of the fuel cells (abstract). The fuel cell device as claimed in claim 2, wherein the holder frame has a first opening that makes space between adjacent two of the fuel cells communicate with space outside the case; each of the first hemi-case and the second hemi-case has a second opening that makes space between the case and the fuel cell adjacent to the case communicate with space outside the case; and the first opening and the second opening are sealed by the first hemi-case and the second hemi-case when the first hemi-case and the second hemi-case are moved to confront with each other, and are exposed when the first hemi-case and the second hemi-case are moved to separate from each other (Fig. 1). The fuel cell device as claimed in claim 2, wherein the holder frame includes a fuel feeding port; and the fuel cell unit includes a flexible tube for connecting the fuel cells and the fuel feeding port (Fig. 1). A fuel cell case for accommodating a plurality of fuel cells, comprising: a holder frame; a first hemi-case movably attached to a first side of the holder frame; and a second hemi-case movably attached to a second side of the holder frame opposite to the first side, the first hemi-case and the second hemi-case being movable in an approaching direction in which the first hemi-case and the second hemi-case approach and a separating direction in which the first hemi-case and the second hemi-case separate; wherein when the first hemi-

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case and the second hemi-case are moved in the separating direction, an interval between adjacent two of the fuel cells is enlarged. The fuel cell device as claimed in claim 10, wherein the holder frame has a first opening that makes space between adjacent two of the fuel cells communicate with space outside the case; each of the first hemi-case and the second hemi-case has a second opening that makes space between the case and the fuel cell adjacent to the case communicate with space outside the case; and the first opening and the second opening are sealed by the first hemi-case and the second hemi-case when the first hemi-case and the second hemi-case are moved to confront with each other, and are exposed when the first hemi-case and the second hemi-case are moved to separate from each other (Fig. 1). Claims 10 and 11 have product-by-process sections. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, the claims are anticipated.

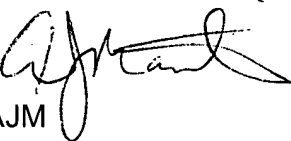
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-

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1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


AJM